

REMARKS

Applicant has carefully reviewed the Application in light of the Office Action mailed August 26, 2004. At the time of the Office Action, Claims 1-18 were pending in the Application. Applicant amends Independent Claim 1 and cancels Claim 7 without prejudice or disclaimer. Applicant's amendments and cancellations to the claims have only been done in an effort to expedite the prosecution in this case and are not the result of any Prior Art reference. Applicant respectfully requests reconsideration of the pending claims and favorable action in this case.

Information Disclosure Statement (IDS)

Applicant notes the Examiner's indication that all references, which were cited in connection with issued U.S. Patent Nos. 6,590,894. and U.S. 6,243,667, are hereby included in the Prosecution of this Application. This strategy would then properly account for all of the previous IDSs that were filed in this case, as well as other references, which may be pertinent to this subject matter. Note that the identified patents and the current pending Application all include inventor Darren Kerr.

Section 102 Rejection

The Examiner rejects Claims 1-6 and 8-10 under 35 U.S.C. §102(e), as being anticipated by U.S. Patent No. 5,754,768 issued to Brech, et al. (hereinafter "Brech"). This rejection is respectfully traversed for the following reasons.

Applicant respectfully reminds the Examiner that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.<sup>1</sup> In addition, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claims" and "[t]he elements must be arranged as required by the claim."<sup>2</sup> In regard to inherency of a reference, "[t]he fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the

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<sup>1</sup> *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987); MPEP §2131.

<sup>2</sup> *Richardson v. Suzuki Motor Co.*, 9 USPQ 2d 1913, 1920 (Fed. Cir. 1989); *In re Bond*, 15 USPQ 2d 1566 (Fed. Cir. 1990); MPEP §2131 (*emphasis added*).

inherency of that result or characteristic."<sup>3</sup> Thus, in relying upon the theory of inherency, an Examiner must provide a basis in fact and/or technical reasoning to support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.<sup>4</sup>

As amended, Independent Claim 1 recites a method for routing messages in a network that includes recording said first routing treatment, wherein said step of recording comprises building an entry in a flow cache. There is nothing in *Brech* or in *Lyon* that offers such a teaching. Indeed, the Examiner readily concedes that such a limitation is missing from *Brech* (see Current Office Action: page 5), but mistakenly relies on *Lyon* for this element.

Turning to this supporting reference in more detail, *Lyon* discloses a method for dynamically shifting between routing and switching packets in a transmission network. In accordance with its architecture, *Lyon* enables switching decisions to be executed in both upstream and downstream directions. (See Abstract and Summary Sections of *Lyon*.) However, evaluating *Lyon* more carefully reveals that it does not provide the cache configuration for recording an entry, as outlined in Independent Claim 1.

Note that the Examiner should appreciate the significance of a flow cache entry in an arrangement that is highlighted by the pending subject matter. The entry in the flow cache allows a given device (e.g. a router) to avoid having to separately determine, for each packet in the message flow, how to route that packet. In cases, where there is no entry for the flow, then a new entry is built in the flow cache. By performing a lookup in the recorded entries, considerable processing is reduced in the system. Hence, information about common message flow patterns can be leveraged to identify packets for which processing has already been determined and, therefore, a given device can process those packets without having to re-determine the common processing. (Note that proper support for this explanation can be found at Page 2 and Pages 10-11 of Applicant's Specification.)

In contrast to these operations, the configuration of *Lyon* relies on timing mechanisms to make proper routing decisions: not potential overlaps that are found in redundant processing activities. Indeed, at the passage cited by the Examiner for this teaching, *Lyon*

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<sup>3</sup> MPEP §2112 (citing *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ 2d 1955, 1957 (Fed. Cir. 1993) (*emphasis in original*).

<sup>4</sup> MPEP §2112 (citing *Ex Parte Levy*, 17 USPQ 2d 1461, 1464 (Bd. Pat. and App. 1990) (*emphasis in original*).

discloses: "Each system node maintains a background refresh timer. When the background refresh timer expires, the state of every flow is examined. If a flow has received traffic since the last refresh period, the system node refreshes the state of that flow by sending a REDIRECT message upstream with the same label and flow identifier as the original REDIRECT message and a new lifetime. If the flow has received no traffic since the last refresh period, the system node removes the flow's cached state. A system node removes the flow's state by issuing an IFMP RECLAIM message upstream to reclaim the label for reuse. However, until the upstream node sends an IFMP RECLAIM ACK message which is received by the node issuing the IFMP RECLAIM message, the flow state is not deleted and the label may not be reused. An IFMP RECLAIM ACK message acknowledges release of the requested label. A system node determines if a flow has received traffic in two different ways, depending on whether the flow is switched or not." (See *Lyon*, Column 19: lines 17-34.)

Clearly, the refresh operation of *Lyon* that implicates the cache object in that scenario is not akin to the recording of an entry in a flow cache for purposes of avoiding redundant processing. Rudimentary timing schemes are simply not the same as identifying and recognizing common patterns by using a recording/entry protocol. For at least these reasons, Independent Claim 1 is patentable over the references of record.

#### Section 103 Rejection

The Examiner rejects Claims 7 and 11-18 under 35 U.S.C. §103(a), as being unpatentable over *Brech* as applied to Claim 1 above, and further in view of U.S. Patent No. 5,892,924 issued to Lyon, et al. (hereinafter "*Lyon*"). This rejection is respectfully traversed for the following reasons.

Applicant respectfully reminds the Examiner that to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation; either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.

Second, there must be a reasonable expectation of success. Third, the prior reference (or references when combined) must teach or suggest all of the claim limitations.<sup>5</sup>

It is respectfully submitted that the rejected claims are patentable over the art of record based on at least the third criterion of obviousness: none of the references alone or in combination teach, suggest, or disclose each and every claim limitation of the Independent Claims. This issue has been evaluated extensively in the §102 analysis above. The *Brech-Lyon* combination is flawed in that there is simply no disclosure of any flow cache in which an entry is built such that future redundant processing is effectively avoided.

In addition, Independent Claim 14 recites a similar (but not an identical) limitation and, thus, is also allowable over this combination using a similar rationale. Additionally, using analogous reasoning, the corresponding dependent claims of these Independent Claims are also allowable over the references of record.

Accordingly, all of the pending claims have been shown to be allowable, as they are patentable over the cited references. Notice to this effect is respectfully requested in the form of a full allowance of these claims.

#### Double Patenting Rejection

Claims 1-18 of the present application are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-11 and 16-20 of U.S. Patent No. 6,590,894 since the claims, if allowed, would improperly extend the “right to exclude” already granted in the patent. Applicant has addressed the Examiner’s concerns with an amendment to Independent Claim 1.

However, should this amendment not placate the Examiner and if the Examiner contends the amendment cannot suitably differentiate the pending subject matter from the cited issued reference, Applicant stands prepared to submit a Terminal Disclaimer in order to overcome the non-statutory double patenting rejection. Any filing of the Terminal Disclaimer should not be construed as an agreement with, or an acquiescence to, the propriety thereof. Applicant reserves the right to comment on the appropriateness of the Terminal Disclaimer at a future time, should Applicant deem it appropriate to do so.

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<sup>5</sup> See M.P.E.P. §2142-43.

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Thus, all of the claims are in condition for allowance. Notice to this effect is respectfully requested in the form of a full allowance of the pending claims.

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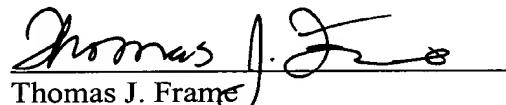
CONCLUSION

Applicant has now made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for all other reasons clear and apparent, Applicant respectfully requests reconsideration and allowance of the pending claims.

Applicant believes no fees are due. However, if this is not the case, the Commissioner is hereby authorized to charge any amount required or credit any overpayment to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

If there are matters that can be discussed by telephone to advance prosecution of this application, Applicant invites the Examiner to contact its attorney, Thomas J. Frame, at (214) 953-6675.

Respectfully submitted,  
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Date: May 12, 2005

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